

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN T. WILLIAMS,

3:20-cv-00019-RCJ-CLB

Plaintiff,

v.

**REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE¹**

UNITED STATES OF AMERICA,

Defendant.

Before the court is Plaintiff John T. Williams's ("Williams"), application to proceed *in forma pauperis* (ECF No. 1), *pro se* civil rights complaint (ECF No. 1-1), and motion for appointment of counsel (ECF No. 3). For the reasons stated below, the court recommends that Williams's *in forma pauperis* application (ECF No. 1) be granted, his complaint (ECF No. 1-1) be dismissed without prejudice, and his motion for appointment of counsel (ECF No. 3) be denied as moot.

I. IN FORMA PAUPERIS APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules of Practice for the District of Nevada provide: "Any person who is

¹ This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP].
 2 The application must be made on the form provided by the court and must include a financial
 3 affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1. "[T]he
 4 supporting affidavit [must] state the facts as to [the] affiant's poverty with some particularity,
 5 definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quotation
 6 marks and citation omitted). A litigant need not "be absolutely destitute to enjoy the benefits
 7 of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

8 A review of the application to proceed IFP reveals Williams cannot pay the filing fee;
 9 therefore, the court recommends that the application (ECF No. 1) be granted.

10 II. SCREENING STANDARD

11 Prior to ordering service on any defendant, the Court is required to screen an *in forma*
 12 *pauperis* complaint to determine whether dismissal is appropriate under certain
 13 circumstances. See *Lopez*, 203 F.3d at 1126 (noting the *in forma pauperis* statute at 28
 14 U.S.C. § 1915(e)(2) requires a district court to dismiss an *in forma pauperis* complaint for
 15 the enumerated reasons). Such screening is required before a litigation proceeding *in forma*
 16 *pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507 (9th Cir.
 17 2015).

18 "[T]he court shall dismiss the case at any time if the court determines that – (A) the
 19 allegations of poverty is untrue; or (B) the action or appeal – (i) is frivolous or malicious; (ii)
 20 fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against
 21 a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

22 Dismissal of a complaint for failure to state a claim upon which relief may be granted
 23 is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii)
 24 tracks that language. When reviewing the adequacy of a complaint under this statute, the
 25 court applies the same standard as is applied under Rule 12(b)(6). See, e.g., *Watison v.*
 26 *Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) ("The standard for determining whether a
 27 plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii)

1 is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a
 2 claim.”). Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
 3 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

4 The Court must accept as true the allegations, construe the pleadings in the light
 5 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v.*
 6 *McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints
 7 are “held to less stringent standards than formal pleadings drafted by lawyers[.]” *Hughes v.*
 8 *Rowe*, 449 U.S. 5, 9 (1980) (internal quotations marks and citation omitted).

9 A complaint must contain more than a “formulaic recitation of the elements of a cause
 10 of actions,” it must contain factual allegations sufficient to “raise a right to relief above the
 11 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading
 12 must contain something more. . . than. . . a statement of facts that merely creates a suspicion
 13 [of] a legally cognizable right of action.” *Id.* (citation and quotation marks omitted). At a
 14 minimum, a plaintiff should include “enough facts to state a claim to relief that is plausible
 15 on its face.” *Id.* at 570; see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

16 A dismissal should not be without leave to amend unless it is clear from the face of
 17 the complaint the action is frivolous and could not be amended to state a federal claim, or
 18 the district court lacks subject matter jurisdiction over the action. See *Cato v. United States*,
 19 70 F.3d 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

20 **III. SCREENING OF COMPLAINT**

21 In the 117-page complaint (including exhibits), Williams presents a disjointed diatribe
 22 that has its basis in criminal proceedings. While Williams asserts he is bringing his action
 23 for damages under the guise of the Federal Tort Claims Act and various other common law
 24 or state torts and federal statutes, Williams essentially takes issue with underlying criminal
 25 proceedings and convictions that occurred in the State of Georgia. (ECF No. 1-1.)

26 Williams only names the United States of America as a defendant in the caption but
 27 also lists the names of various other defendants in the body of the complaint: Edith Ramirez,

1 Valerie Verduse, Jessica Rich, Jonathan Nuechterlein, Deborah Marrone, McCalla Raymer
2 Peirce LLC, Bank United Mortgage, Willard Wrecker Service, Ace Homes LLC, City of
3 Lawrenceville, Robin Rock, and Marcela Mateo. (*Id.* at 1, 23-25.)

4 A civil action must be brought in (1) a judicial district in which any *defendant* resides,
5 if all defendants reside in the same state where the district is located, (2) a judicial district in
6 which a substantial part of the events or omissions giving rise to the claim occurred, or a
7 substantial part of property that is the subject of the action is situated, or (3) a judicial district
8 in which any defendant is subject to personal jurisdiction at the time the action is
9 commenced, if there is no district in which the action may otherwise be brought. 28 U.S.C.
10 § 1391(b).

11 There is no indication that any of the individual defendants reside in the District of
12 Nevada. Instead, the factual allegations, while confusing, reveal that the underlying criminal
13 proceeding took place in the District of Georgia.

14 Further, while Williams sues the United States under the Federal Tort Claims Act, the
15 allegations do not state a claim under the Federal Tort Claims Act ("FTCA"). The FTCA
16 permits individuals to sue the government for money damages to compensate for injuries
17 arising out of the negligent acts of government employees. See 28 U.S.C. § 1346(b)(1). The
18 conduct that is the subject of the complaint is not the negligent acts of government
19 employees, but specific conduct undertaken with respect to the underlying criminal
20 proceeding(s). If Williams wishes to challenge his conviction(s), his remedy is a direct
21 appeal in the court where the conviction was rendered, or possibly, federal habeas relief
22 after administrative remedies are exhausted. Thus, Williams does not state a colorable
23 claim against the United States under the Federal Tort Claims Act.

24 In sum, Williams has not alleged that any defendant resides in the District of Nevada,
25 that any of the events giving rise to the action transpired here and he has not otherwise
26 alleged any connection to this District. Therefore, it appears the court lacks personal
27 jurisdiction over the defendants and venue is improper here. The action should be

1 dismissed, without prejudice, only to the extent Williams may file a complaint stating
2 plausible claims for relief in the correct court.

3 In light of this Report and Recommendation, the court also recommends that
4 Williams's motion for appointment of counsel (ECF No. 3) be denied as moot.

5 **IV. CONCLUSION**

6 Consistent with the above, the court finds that dismissal is warranted based on a lack
7 of personal jurisdiction and improper venue.

8 The parties are advised:

9 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
10 Practice, the parties may file specific written objections to this Report and Recommendation
11 within fourteen days of receipt. These objections should be entitled "Objections to
12 Magistrate Judge's Report and Recommendation" and should be accompanied by points
13 and authorities for consideration by the District Court.

14 2. This Report and Recommendation is not an appealable order and any notice
15 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District
16 Court's judgment.

17 **V. RECOMMENDATION**

18 **IT IS THEREFORE RECOMMENDED** that Williams's application to proceed *in forma*
19 *pauperis* (ECF No. 1) be **GRANTED**;

20 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** Williams's complaint (ECF
21 No. 1-1);

22 **IT IS FURTHER RECOMMENDED** that the complaint (ECF No. 1-1) be **DISMISSED**,
23 **WITHOUT PREJUDICE**, to the extent Williams can assert plausible claims for relief in the
24 correct court;

25 **IT IS FURTHER RECOMMENDED** that the motion for appointment of counsel (ECF
26 No. 3) be **DENIED** as moot; and

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1 **IT IS FURTHER RECOMMENDED** that this action be **CLOSED** and that judgment
2 be entered accordingly.

3 **DATED:** May 4, 2020.

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UNITED STATES MAGISTRATE JUDGE